

COMMONWEALTH OF KENTUCKY  
SUPREME COURT  
FILE NO. 2007-SC-000347-CL

COMMONWEALTH OF KENTUCKY

PETITIONER

V.

MICHAEL BAKER

RESPONDENT

**MOTION FOR STAY OF EXECUTION AND  
ENFORCEMENT OF THE OPINION  
AND REQUEST TO RETAIN THE RECORD ON APPEAL  
PENDING REVIEW BY THE UNITED STATES SUPREME COURT**

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Comes the Commonwealth of Kentucky, Petitioner herein, pursuant to CR 76.44, and requests a stay of execution and enforcement of the opinion in the above-styled case, and for the Clerk of this Court to retain the record on appeal pending a ruling by the United States Supreme Court. The reasons for these requests are as follows:

1. On February 2, 2007, respondent was charged with violating KRS 17.545. The Kenton District Court subsequently granted respondent's motion to dismiss the charge on the basis that KRS 17.545 constituted an ex post facto violation. The Commonwealth then moved this Court for certification of the law to determine whether KRS 17.545 was an ex post facto punishment.

2. On October 1, 2009, this Court rendered a 5-2 decision certifying that KRS 17.545 was an ex post facto violation, and, therefore, could not be applied to persons whose

crime were committed prior to the effective date of the statute, July 12, 2006.

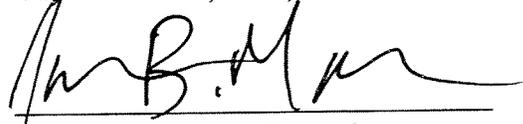
3. The Commonwealth is preparing to file a Petition for a Writ of Certiorari with the United States Supreme Court requesting review of the opinion of this Court in this case. The Commonwealth has meritorious and substantial federal grounds on which to base this petition as this Court's ex post facto analysis was based on precedent from the United States Supreme Court. Additionally, the United States Supreme Court on September 30, 2009, granted a Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit in Carr v. United States, — S.Ct. — , 2009 WL 1095868, 77 USLW 3610 (2009), in which it will consider whether retroactive application of the federal Sex Offender Registration and Notification Act, Pub. L. 109-248 §§ 101-55, 120 Stat. 587 (2006), violates the ex post facto clause of the United States Constitution.

4. Pursuant to CR 76.44(b), the Commonwealth requests a stay of ninety (90) days from the date the opinion herein was rendered, October 1, 2009.

5. Additionally, the Commonwealth requests that the Clerk of this Court retain the record on appeal until such time as the United States Supreme Court rules on the Petition for Writ of Certiorari.

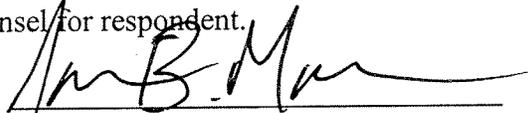
**NOTICE**

Please take notice that the foregoing motion has been filed in the Office of the Clerk of the Supreme Court of Kentucky on this 21<sup>st</sup> day of October, 2009, to be heard at the Court's convenience.

  
Assistant Attorney General

**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing motion has been delivered via first class mail this 21st day of October 2009, to the Hon. Bradley Fox, Fox & Scott, PLLC, 517 Madison Avenue, Covington, Kentucky 41011, counsel for respondent.

  
Assistant Attorney General

WHEREFORE, this Court should grant the Commonwealth's requests for a stay of the execution and enforcement of its opinion in the above-styled case to and including December 30, 2009, which is ninety (90) days from the date this Court rendered its opinion; and that the Clerk of this Court retain the record pending the United States Supreme Court's ruling on its Petition for Writ of Certiorari.

Respectfully submitted,

**JACK CONWAY**  
Attorney General of Kentucky

A handwritten signature in black ink, appearing to read "Jason B. Moore", written in a cursive style.

**JASON B. MOORE**  
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